

LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.

SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

NORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BRIAN M. MADDEN
BARBARA K. GARDNER
STEPHEN D. BARUCH
SALLY A. BUCKMAN
NANCY L. WOLF
DAVID S. KEIR
DEBORAH R. COLEMAN
NANCY A. ORY
WALTER P. JACOB
ROSS G. GREENBERG
H. ANTHONY LEHV
JOHN D. POUTASSE
CHRISTOPHER J. SOVA
PHILIP A. BONOMO
JUAN F. MADRID

OF COUNSEL
MARLA R. WOLFE

ORIGINAL

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

WWW.LSL-LAW.COM

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WRITER'S DIRECT DIAL
202-416-6770

WRITER'S DIRECT FAX
202-429-4604

WRITER'S E-MAIL
BMADDEN@LSL-LAW.COM

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: **MM DOCKET 99-268**
RM 9691

Dear Ms. Salas:

This letter is written on behalf of Sarkes Tarzian, Inc., the proponent in the above-referenced rule making proceeding which contemplates the substitution of DTV Channel 13 in lieu of Channel 55, as currently assigned in the DTV Table of Allotments, to be for used for transitional DTV use by Station WRCB-TV, Chattanooga, Tennessee.

On October 26, 1999, the undersigned counsel filed a *Motion to Strike, or in the Alternative, Motion for Leave to File Accompanying Opposition to Reply Comments* on behalf of Sarkes Tarzian, Inc., responding to the reply comments filed in the above-referenced proceeding on October 12, 1999 by Media General Broadcasting, Inc. Inadvertently, in the duplicating process, the pleading became separated from the Engineering Statement that was intended to accompany the material filed on behalf of Sarkes Tarzian, Inc. It is believed that the original of the Motion was properly filed, however, out of an abundance of caution, there is transmitted herewith a re-executed original and five copies of the *Motion*, to which is attached another copy

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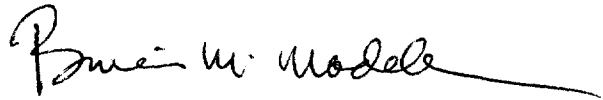
Ms. Magalie R. Salas
October 27, 1999
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of the Engineering Statement; a copy of the transmittal letter bearing the receipt stamp of the Office of the Secretary is also enclosed. It is respectfully requested that this material be associated with that filed yesterday. A complete copy of this letter is being served by hand today upon counsel for Media General Broadcasting, Inc. and Pam Blumenthal of the Video Services Branch.

The undersigned counsel apologizes for any confusion that may have arisen in connection with this inadvertent omission.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brian M. Madden", with a long horizontal flourish extending to the right.

Brian M. Madden

BMM/tlm
Enclosure

cc: John R. Feore, Jr., Esq.
Scott S. Patrick, Esq.
Pam Blumenthal

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),)	MM Docket No. 99-268
Table of Allotments,)	RM-9691
Digital Television Broadcast Stations.)	
(Chattanooga, Tennessee))	

To: Chief, Video Services Division

**MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE
TO FILE ACCOMPANYING OPPOSITION TO REPLY COMMENTS**

Sarkes Tarzian, Inc. (“STI”), licensee of Station WRCB-TV, NTSC Channel 3, Chattanooga, Tennessee, by its attorneys, respectfully submits that the Commission should strike without consideration the Reply Comments filed in the above-captioned proceeding on October 12, 1999, by Media General Broadcasting, Inc. (“*Reply Comments*”). Media General Broadcasting, Inc. (“*Media General*”) is the licensee of Station WDEF(TV), NTSC Channel 12, Chattanooga, Tennessee. The Reply Comments are the only filing made by Media General in this proceeding; it did not file Comments by the deadline fixed by the *Notice of Proposed Rule Making* (“*NPRM*”) adopted by the Commission in this proceeding. As discussed herein, Media General has filed its Reply Comments in a manner which precludes STI’s opportunity to respond to the objections raised therein and, as a result, should be struck as an abuse of Commission process. Furthermore, the Reply Comments attempt to advance a counterproposal in this proceeding in direct violation of Section 1.420(d) of the Commission’s rules. Finally, even if considered substantively, the contentions advanced in the Reply Comments have no merit. The

Commission should issue a *Report and Order* in this proceeding adopting the DTV channel substitution set forth in the *NPRM*.

I. Background

In response to a petition for rule making filed by STI (the "*Petition*"), the Commission adopted the *NPRM* requesting comment on the proposed substitution of Channel 13 in lieu of Channel 55 as the paired DTV allotment in Chattanooga for Station WRCB-TV. The *NPRM* set the due date for interested parties to file comments as September 27, 1999, and that for reply comments as October 12, 1999.

As required by Commission practice, STI filed comments incorporating by reference its *Petition* and restating its intention to apply for DTV Channel 13 if allotted. *Comments of Sarkes Tarzian, Inc.*, filed September 17, 1999. No other party — including Media General — filed comments addressing the *NPRM*. Instead, Media General's only submission in this proceeding has been styled as "Reply Comments" which purportedly address the comments filed by STI. The Commission's rules do not permit the opportunity to file further pleadings in this proceeding unless specifically requested of or authorized by the Commission, *see* 47 C.F.R. § 1.415(d), and STI may thus be precluded from opposing the Media General filing.

II. The Reply Comments of Media General Abuse the Commission's Processes and Should Be Disregarded.

The Commission should strike Media General's Reply Comments because the manner in which they were filed constitutes an abuse of the Commission's processes. Rather than facilitate a full record in this proceeding, Media General has acted so as to deny STI the

opportunity to oppose Media General's claims. Although Media General claims that its Reply Comments were filed in response to the comments of STI, this claim is unpersuasive. The Reply Comments address exclusively the Petition itself and specifically object to the channel substitution that STI has proposed. The technical nature of STI's proposal was not altered by its comments, which merely fulfilled the Commission's requirement that a proponent of an allotment in a rule making proceeding demonstrate its continued interest in the proposed allotment. Media General thus had all of the relevant information necessary to support its objections to the Petition when comments were due on September 27, 1999. Nevertheless, Media General waited to raise its objections for the first time on the last day for filing reply comments. It can only be concluded that Media General's filing delay is an attempt to bypass STI's right to respond. Although STI believes that Media General's intent to abuse the process is clear, specific evidence of abusive intent is not needed for the Commission to find that such conduct has occurred. *See Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1702 at n.10 (1992) (in a rule making proceeding, the Commission may act prospectively, that is, without a specific finding of abusive intent, to prevent abuses by relying on its judgment based on experience).

Moreover, to the extent that Media General seeks to have Channel 13 allotted as the paired DTV channel for its own Station WDEF(TV), the pleading constitutes a further violation of Commission rules. Section 1.420(d) of the Commission's rules states that counterproposals in proceedings to channel allotments are to be advanced at the comment stage only, and that counterproposals advanced in reply comments will not be considered. The Commission's clear rule notwithstanding, Media General states that "[i]f the Commission were

to allot DTV Channel 13 to Chattanooga, the most efficient assignment ... would be to WDEF-DT.” Reply Comments at 4. Media General’s perfunctory claim that it wishes to defer requesting this assignment until it has studied the possibility more thoroughly¹ does not change the impermissible nature of its request.

For all of the foregoing reasons, the Commission should strike Media General’s Reply Comments without consideration and grant STI’s Petition.

III. If Media General’s Filing Is to Be Considered, STI Is Entitled to an Opportunity to Respond.

If the Commission determines not to strike the material filed by Media General, STI believes that it is entitled to an opportunity to respond to Media General’s filing in the same manner had Media General properly filed its opposition to the *NPRM*. Accordingly, STI respectfully requests, in the alternative, that it be granted leave to file a response to Media General’s pleading and that the Commission consider the accompanying material.

Media General asserts that STI’s proposal cannot be granted due to STI’s failure to adhere to the directional antenna rules for NTSC stations and because of the potential for interference from WRCB-DT to the NTSC operation of Media General’s Station WDEF(TV). Neither objection is valid.

Section 73.622(a) of the Commission’s rules clearly states that “a request to amend the DTV table to change the channel of an allotment will be evaluated for technical

¹ The issuance of the *NPRM* on August 13, 1999 gave full notice of the STI proposal. Media General had ample time to review the proposal and file its comments by the announced September 27, 1999 deadline.

acceptability using engineering criteria set forth in § 73.623(c).” No mention of a directional antenna suppression constraint is made anywhere in the DTV technical criteria, and there is no reason to believe -- certainly Media General has failed to point to any authority for its assertion -- that the NTSC directional antenna rules apply to DTV operations. As noted in the accompanying *Engineering Statement of Bernard R. Segal, P.E. (“Segal Engineering”)*, many DTV allotments have been made with suppression ratios in excess of that prohibited for NTSC operation. Segal Engineering at 4-5. As Mr. Segal concludes, “[t]he omission of a maximum-to-minimum ratio specification for DTV directional antenna ... was a conscious action on the part of the FCC.” *Id.* at 5. The Commission has adopted different technical specifications for DTV and NTSC operations, as indicated by the different description of the applicable technical rules for each type of operation included in FCC Form 301. Segal Engineering at 5. As was evident from STI’s Petition and the Commission’s issuance of the *NPRM*, STI’s proposal meets the pertinent technical criteria for DTV operation.

Media General also asserts that STI’s proposed DTV operation on Channel 13 would create interference within the WDEF(TV) viewing area. Reply Comments at 2-3.² As Mr. Segal points out, his analysis, which employs the Commission’s FLR computer software,

² The site proposed for WRCB-DT would be located approximately three kilometers from the NTSC site of WDEF(TV). Media General contends that the proximity of the co-channel operation proposed by STI could perhaps be handled “most efficient[ly]” by assigning DTV Channel 13 to WDEF(TV). Mr. Segal disputes that there would be a problem in the absence of co-location of the two operations. Segal Engineering at 6. In any event, as noted previously, this suggestion is a prohibited counterproposal and cannot be considered in this proceeding. For this reason, STI will not further address Media General’s suggestion in this regard.

indicates that no interference will occur, whereas Media General's consultant has used a different software system to project that interference would be caused to 634 people within the WDEF(TV) NTSC service area. In Mr. Segal's experience, the software program used by Media General's consultant often yields results that differ from the FCC's program. Segal Engineering at 2. Media General's consultant claims that its software was "intended to model the FCC software," *Engineering Report of Moffet, Larson & Johnson, Inc.* at 2, but he has failed to fully "identify the facilities on which the computer analysis was done (computer and software used) and whether sufficient comparisons have been made to confirm that these facilities produce the same results as the Commission's implementation of OET Bulletin No. 69," as required by the Commission. *Public Notice, Additional Application Processing Guidelines for Digital Television (DTV)*, released August 10, 1998, at 2. In any event, even though Media General declines to concede exactly how small a percentage of the WDEF(TV) service area population is represented by 634 persons, it is plain that the degree of interference -- if any -- that may be expected within that area from the operation of WRCB-DT on Channel 13 is below the 2% *de minimis* benchmark established by the Commission. And, for that matter, so are the percentage calculations of interference to each of the other NTSC stations cited by Media General, even though those calculations are presumably flawed by the use of alternative software by Media General's consultant. *See also* Segal Engineering at 2-4.

Finally, the speculative claims made by Media General that the Commission's interference rules and policies may not be adequate because "[t]here has been little field testing for VHF upper-adjacent channel interference," Reply Comments at 3, have no place in this

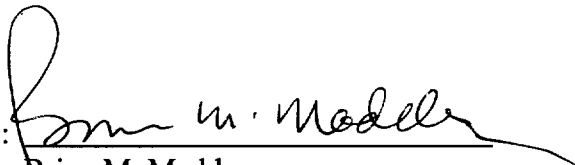
proceeding; if Media General believes that the Commission's standards are not sufficient on these grounds, it should petition the Commission to institute a rule making to investigate these contentions.

IV. Conclusion

The Reply Comments filed by Media General should be disregarded as a consequence of its abuse of the Commission's well established procedures for rule making proceedings. Even if the Commission were inclined to consider them, none of the contentions advanced by Media General in opposition to STI's request for substitution of Channel 13 in place of Channel 55 in the DTV Table of Allotments for use by WRCB-DT has merit. For the reasons advanced in the Petition and in its comments in this proceeding, as well in as the foregoing material, STI respectfully requests that the Commission adopt the DTV channel substitution for WRCB-DT as set forth in the *NPRM*.

Respectfully submitted,

SARKES TARZIAN, INC.

By: 

Brian M. Madden
Philip A. Bonomo

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, NW
Suite 600
Washington, DC 20006
(202) 429-8970

October 26, 1999

Its Attorneys

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

**ENGINEERING STATEMENT
IN SUPPORT OF
OPPOSITION TO REPLY COMMENTS
MM DOCKET NUMBER 99-268
SARKES TARZIAN, INC.
CHATTANOOGA, TENNESSEE**

The instant Engineering Statement has been prepared on behalf of Sarkes Tarzian, Inc., (STI) the proponent in MM Docket Number 99-268 for amendment of the DTV Table of Allotments to specify Ch. 13 in lieu of Ch. 55 in Chattanooga for use for WRCB-DT.

Media General Broadcasting, Inc. (Media General), licensee of station WDEF-TV, Chattanooga, Tennessee, has submitted "Reply Comments" in this proceeding alleging certain deficiencies in the STI proposal which are not well founded. This Statement addresses each argument raised in the Media General Reply Comments.

Media General challenges STI's statement that the DTV operation of WRCB-DT on Ch. 13 would not cause interference to the NTSC operation of WDEF-TV on Ch. 12. The Engineering Statement accompanying the Media General Reply states that the Institute for Telecommunications Sciences (ITS)

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Sarkes Tarzian, Inc.

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software (which Media General claims is intended to model the FCC's software used in MM Docket Number 87-268) yields a different result than obtained by STI. Based on that study, Media General claims there are 634 persons within the calculated area of interference to WDEF-TV as opposed to the undersigned's result that no persons would receive interference. The undersigned used the FCC's FLR software. Media General acknowledges that 634 persons is less than 2% of the population within the WDEF-TV service area, but Media General states that it has an unspecified concern that interference would be more widespread than predicted.

As an initial matter, the undersigned has used the Institute for Telecommunications Sciences software from time to time and has often obtained results that are at variance with the FCC's FLR software program results. The FCC has stated that the results obtained using its FLR software would be controlling. (See the FCC's Public Notice of August 10, 1998, "Additional Application Processing Guidelines for Digital Television (DTV), in particular, the paragraph dealing with "Rounding and calculation tolerances."). Moreover, the FCC makes no claim, nor does the undersigned make such claim, that the calculation results are guarantees of actual service or non-interference. The

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Sarkes Tarzian, Inc.

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procedures employed are administrative tools, and, so long as all parties adhere to the same procedures, all parties can be treated fairly. The Media General claim of possible, more wide-spread interference is only speculative and of no import with regard to the instant STI Petition.

Next, Media General alleges that the predicted area of interference to WVTM-TV, Birmingham, Ch. 13, would be to 29,365 persons or 2.004% of the WVTM-TV service. The undersigned does not agree with the Media General result. The innuendo that the interference to WVTM-TV would exceed the de minimis 2.0% value is meaningless since, in any event, 2.004% rounds to 2.0%. The FCC addressed the matter of "rounding and calculation tolerances" in a Public Notice issued on August 10, 1998, entitled "Additional Application Processing Guidelines for Digital Television (DTV)". In that document, the FCC stated: "interference to 2.04% of a station's population will be considered de minimis unless it exceeds the 10% threshold". A 2.004% interference level thus is within the FCC's stated tolerance parameters.

Media General states that its calculation of 2.004% interference population to WVTM-TV is based on estimated 1997 population figures. However, Media General does not indicate whether the WVTM-TV baseline population was based on the 1990 census or the 1997 estimate. If the baseline population for WVTM-TV is based on the 1990 census, and the interference population is based on the 1997 estimate, Media General is clearly mixing apples and oranges and its argument is, at the very least, disingenuous. However, as explained above, it ultimately makes no difference how this calculation was derived since the 2.004% value recited is still consistent with the FCC's established permissible de minimis benchmark.

Finally, Media General claims that there is a violation of the ratio of maximum-to-minimum radiation for the directional antenna proposed for the Ch. 13 DTV allotment. Media General alleges that Section 47C.F.R. 73.685(e) is controlling, since it states that for a VHF station, the maximum to minimum ratio cannot exceed 10 dB. What Media General fails to recognize is that Section 47C.F.R. 73.685(e) of the Rules is appropriate only for NTSC directional proposals. The correct rule section for DTV directional proposals is Section 47 C.F.R. 73.625(c), which contains no constraint on maximum-to-

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Sarkes Tarzian, Inc.

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minimum ratios for directional antennas used for DTV operations. As a matter of fact, the FCC has made many DTV allotments with maximum-to-minimum ratios exceeding the levels set forth in 47C.F.R. 73.685(e). For example, the VHF Ch. 8 DTV allotment for St. Charles, Louisiana, specifies a directional antenna with a maximum-to-minimum ratio of 14.0 dB, which is well in excess of 10 dB. The omission of a maximum-to-minimum ratio specification for DTV directional antennas in the adoption of a separate rule applicable to DTV operations, was a conscious action on the part of the FCC.

Additional support for the applicability of Section 73.625(c) of the Rules to DTV--and not Section 73.685--may be found by referring to FCC Form 301. The Technical Specifications portion of the Form for DTV, Section III-D, refers specifically to 47 C.F.R. Section 73.625(c) in item 10(e) which relates to items to be supplied for DTV directional antenna proposals. On the other hand, in the Technical Specifications, Section III-C, used for NTSC proposals, Item 11(e), relating to directional antennas, specifically refers to 47 C.F.R. Sections 73.682(a)(14) and 73.685. The FCC Form 301 leaves no doubt as to which provisions of the Rules are appropriate for DTV and which are appropriate for NTSC directional antennas.

Finally, Media General points to the fact that the site proposed by STI for the Ch. 13 DTV allotment is not the same as the NTSC site employed by Media General's WDEF-TV, Ch. 12. Media General suggests that the site distance differential can create a greater prospect for interference occurring to WDEF-TV than would be the case were the DTV allotment for Ch. 13 to be made to Media General for use for WDEF-DT so that the sites could be coextensive.

Media General fails to recognize that the site proposed for the Ch. 13 DTV allotment is only 3.1 km from the WDEF-TV site and, therefore, is within the 5 km range differential which the FCC permits for a DTV facility without the need for an additional assessment of electromagnetic interference provided the allotment parameters are not exceeded. In the instant case, the calculations made take into account the actual separation and actual parameters that will be employed. The calculations demonstrate no interference to WDEF-TV. The argument raised is not significant from an engineering standpoint.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Sarkes Tarzian, Inc.

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In summary, none of the issues raised by Media General have any technical validity with respect to the pending Petition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 26, 1999.

A handwritten signature in cursive script that reads "Bernard R. Segal, P.E.".

Bernard R. Segal, P.E.

LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.

SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

RETURN

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

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202-416-6770

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MEREDITH S. SENTER, JR.
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OF COUNSEL
MARLA R. WOLFE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **MM DOCKET NO. 99-268**
RM-9691

Dear Ms. Salas:

On behalf of Sarkes Tarzian, Inc., the proponent of the above-referenced rule making proceeding, there are transmitted herewith an original and five copies of its *Motion to Strike, or in the Alternative, Motion for Leave to File Accompanying Opposition to Reply Comments*. This filing is submitted in response to the Reply Comments filed in this proceeding on October 12, 1999 by Media General Broadcasting, Inc.

LEVENTHAL, SENTER & LERMAN P.L.L.C.

Ms. Magalie R. Salas
October 26, 1999
Page -2 -

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Sincerely yours,

A handwritten signature in cursive script that reads "Brian Madden (SAS)".

Brian M. Madden

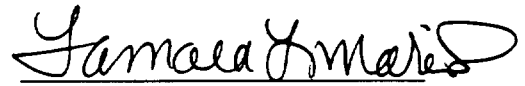
BMM/tlm
Enclosure

cc: Pam Blumenthal
John R. Feore, Jr., Esq.
Scott S. Patrick, Esq.

CERTIFICATE OF SERVICE

I, Tamara L. Mariner hereby certify that true and correct copies of the foregoing "Motion to Strike, or in the Alternative, Motion for Leave to File Accompanying Opposition to Reply Comments" were sent by first-class postage prepaid mail this 26th day of October 1999 to the following:


John R. Feore, Jr., Esq.
Scott S. Patrick, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue
Suite 800
Washington, DC 20036


Tamara L. Mariner

CERTIFICATE OF SERVICE

I, Tamara L. Mariner hereby certify that true and correct copies of the foregoing "Motion to Strike, or in the Alternative, Motion for Leave to File Accompanying Opposition to Reply Comments" were sent by hand delivery this 27th day of October 1999 to the following:

John R. Feore, Jr., Esq.
Scott S. Patrick, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue
Suite 800
Washington, DC 20036



Tamara L. Mariner